

**REPORT BY THE CHAIRMAN OF THE
AKAROA-WAIREWA COMMUNITY BOARD
26 SEPTEMBER 2007**



PART A - MATTERS REQUIRING A COUNCIL DECISION

1. TAKAPUNEKE/GREENS POINT, AKAROA - ENDOWMENT ISSUES

General Manager responsible:	General Manager City Environment
Officer responsible:	Planning and Investigations Team Manager
Author:	Robert O'Connor, Solicitor, Legal Services Unit

PURPOSE OF REPORT

1. The purpose of this report is to seek the Council's approval for Council staff to formally apply on behalf of the Council under section 140(3) of the Local Government Act 2002 ("LGA") to the Minister of Local Government for his approval to alter the endowment purposes for which the land at Takapuneke/Greens Point, Akaroa is held by the Council.

EXECUTIVE SUMMARY

2. On 8 February 2006 the Banks Peninsula District Council ("BPDC") passed the following resolution:

"That Council instruct staff:

- (i) *in terms of the Reserves Act 1977, to initiate the making of Greens Point into an Historic Reserve and change the classification of Takapuneke Reserve from Local Purpose (Historic Site) Reserve into an Historic Reserve (as is the adjacent Britomark Historic Reserve)*
- (ii) *to obtain written evidence of the historical background of all three Historic Reserve areas to enable an Order-in-Council to be approved to make Greens Point, Takapuneke Reserve and the Britomark Historic Reserve into a National Reserve.*
- (iii) *that a Management Plan be prepared for the three Historic Reserves."*

("the BPDC resolution")

3. The land at Greens Point (as defined in paragraph 14 of this report) is in fact held by the Council (and was held by BPDC) as endowment land, the terms of the endowment being that the land be held by the Council in trust "in aid of Council funds".
4. The land known as Takapuneke Reserve (as defined in paragraph 15 of this report) is in fact held by the Council (and was held by BPDC) as endowment land, the terms of the endowment being that the land be held by the Council in trust "in aid of Council funds". Subsequently in 2001 Takapuneke Reserve was vested as local purpose (historic site) reserve under the Reserves Act 1977 by BPDC without account being taken of the endowment status of that land.
5. A Council seminar on this subject matter was held on 3 July 2007. That seminar gave a very clear direction to staff that elected members wished to forgo the development opportunity presented by the 'residential' zoning of the land at Greens Point and concluded with the Chairman requesting that "staff be asked to bring forward a full report to provide clarity to the situation and fulfil the resolution of the previous Council."
6. The Legal Services Unit has advised that the achievement of the purposes specified in the BPDC resolution will need to be achieved by a staged process and that the first stage of that process should be to seek the agreement of the Minister of Internal Affairs ("Minister") to approve a change in the endowment purposes for which the Greens Point land is held by the Council to enable, as the second stage, the land to be vested as an 'historic reserve' under the Reserves Act 1977.
7. The Legal Services Unit has advised that the position of the Takapuneke Reserve land in relation to the endowment should also be regularised by the Council seeking the agreement of the Minister to approve a change in the endowment purposes for which the Takapuneke Reserve land is held.

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8. As the first stage in the process to achieve the purposes of the BPDC resolution in respect of the Greens Point land, formal Council approval is therefore sought to permit staff to apply to the Minister pursuant to section 140(4) of the LGA seeking his approval for a change in the endowment purposes for which the land at Greens Point may be used from an "endowment in aid of Council funds" to an "endowment to facilitate and support firstly, the use of the land at Greens Point as an historic or national reserve and, secondly, the vesting of that land as an historic or national reserve under the Reserves Act 1977". The Ministry of Internal Affairs has been approached by the Legal Services Unit and it has, subject to the Minister's formal decision, approved this suggested wording.
9. To regularise the position of the Takapuneke Reserve land formal Council approval is therefore sought to permit staff to apply to the Minister pursuant to section 140(4) of the LGA seeking his approval for a change in the endowment purposes for which the Takapuneke Reserve land may be used from an "endowment in aid of Council funds" to an "endowment to facilitate and support firstly, the use of the land at Takapuneke/Greens Point as an historic or national reserve and, secondly, the vesting of that land as an historic or national reserve under the Reserves Act 1977."
10. Once the outcome of the application to the Minister under section 140(4) of the LGA is known it will be necessary for staff to report to the Council on the steps required from that point to implement the BPDC resolution. If the application to the Minister is successful it is envisaged that the next steps will be to have the Greens Point land vested as 'historic reserve' under the Reserves Act 1977 and the classification of the Takapuneke Reserve altered to 'historic reserve'. It is expected that staff will at the same time report to the Council on the feasibility of the Greens Point land, Takapuneke Reserve and the neighbouring Britomart Historic Reserve being declared as a National Reserve under section 13 of the Reserves Act 1977.

FINANCIAL CONSIDERATIONS

11. Whilst the properties known as Greens Point land and the Takapuneke Reserve land are presently held by the Council as endowment land "in aid of Council funds", in reality the land produces very little by way of income to the Council. The only income directly generated from the land is that from a sheep grazing licence and is likely that for the foreseeable future that such limited income stream would continue.
12. Accordingly the impact of the Council adopting the staff recommendations will have no financial impact on the Council.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

13. The staff recommendations contained in this report will not affect existing unit budgets.

LEGAL CONSIDERATIONS

Have you considered the legal implications of the issue under consideration?

14. For the purposes of this report the Greens Point land is considered to be the land containing:
 - (a) 4.0611 hectares being legally described as Lot 1 on Deposited Plan 73274 and comprised in Certificate of Title CB42B/680; and
 - (b) 1741m² being legally described as Lot 3 on Deposited Plan 73274 and comprised in Certificate of Title CB42B/682
15. For the purposes of this report the Takapuneke Reserve land is all that land containing 9.6087 hectares being legally described as Lot 1 on Deposited Plan 76825 and comprised in Certificate of Title CB40A/795.
16. The Greens Point land is in fact held by the Council (and was held by BPDC) as endowment land, the terms of the endowment being that the land be held by the Council in trust "in aid of Council funds".

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17. Takapuneke Reserve is in fact held by the Council (and was held by BPDC) as endowment land, the terms of the endowment being that the land be held by the Council in trust "in aid of Council funds". Subsequently in 2001 Takapuneke Reserve was vested as local purpose (historic site) reserve under the Reserves Act 1977 by BPDC without account being taken of the endowment status of that land. Complicating matters further, whilst the official action to vest Takapuneke Reserve as local purpose (historic site) reserve was taken (the required notice appeared in the NZ Gazette on 28 March 2002) the reserve status of this land has not been noted on certificate of title to the land.
18. The effect of the "endowment" is that both pieces of land are presently held by the Council in trust to provide an income in support of Council's funds and cannot legally be used for any other purpose. The Greens Point and the Takapuneke Reserve lands are therefore not strictly Council owned land that can be freely disposed of or dealt with by the Council at will. Any transaction involving these lands must therefore account for the existence of the endowment and the terms of the endowment must, in the absence of anything else, be complied with.
19. It is therefore not legally possible for the Council to simply move to vest the Greens Point land as historic reserve under the Reserves Act 1977 without complying with the formal statutory requirements governing dealings with endowment land.
20. The LGA does make express provision for dealings or proposed dealings with endowment land. Specifically, and of direct relevance to this circumstance at issue, section 140 of the LGA does expressly allow local authorities holding endowment land to change the purpose for which that land is held, provided that certain specified processes are first complied with.
21. Specifically, under section 140(4)(a) of the LGA a local authority may apply to the Minister of Local Government to have the purpose for which endowment land may be used or the purpose for which the income derived from the endowment land may be used altered.
22. Staff have engaged in a number of preliminary communications with the Ministry of Internal Affairs around this issue and have been assisted in this regard by personal contact made by Councillor Parker with the Minister. These enquiries indicate that there is a good probability that the Minister would approve an application to change the endowment purpose.
23. In relation to the Greens Point land, the achievement of the purposes specified in the BPDC resolution will need to be achieved by a staged process and that the first stage of that process should be to seek the agreement of the Minister of Internal Affairs ("Minister") to approve a change in the endowment purposes for which the Greens Point land is held by the Council to enable, as the second stage, the land to be vested as an 'historic reserve' under the Reserves Act 1977.
24. The position of the Takapuneke Reserve land in relation to the endowment should also be regularised by the Council seeking the agreement of the Minister to approve a change in the endowment purposes for which the Takapuneke Reserve land is held.
25. An application to the Minister of Local Government under section 140(4)(a) can only be made on the authority of a formal council resolution.
26. As noted in paragraph 38(b) below, that part of the original block of endowment land originally acquired by the Akaroa County Council at Greens Point/Takapuneke referred to in paragraph 38(b) was sold by BPDC to a private interest in 1997. It is not known whether the statutory procedures applicable at the time (section 230(4) of the Local Government Act 1974) were complied with or not in respect of this sale. The Council's Corporate Finance Unit staff have advised that the BPDC financial records held by the Council do not extend back to 1997 and that it is therefore thought to be impossible to determine whether the appropriate accounting and legal steps were taken in respect of that sale.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

27. Adoption of the staff recommendations will support the following community outcomes listed in the 20006-16 LTCCP:
 - (a) "We protect the integrity of heritage buildings, places and objects"
 - (b) "We all have access to excellent facilities and environments for physical activities"

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Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

28. The purpose of this report is align the Council's decision making on this issue with statutory requirements thus supporting the good decision making activity referred to in the 2006-16 LTCCP.

ALIGNMENT WITH STRATEGIES

29. Not applicable.

Do the recommendations align with the Council's strategies?

30. Not applicable.

CONSULTATION FULFILMENT

31. Not applicable.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Authorise Council staff to apply to the Minister of Internal Affairs pursuant to section 140(4) of the LGA seeking his approval for a change in the endowment purposes for which Greens Point land may be used from an "endowment in aid of Council funds" to an "endowment to facilitate and support firstly, the use of the land at Greens Point as an historic and/or national reserve and, secondly, the vesting of that land as an historic and/or national reserve under the Reserves Act 1977."
- (b) Authorise Council staff to apply to the Minister of Internal Affairs pursuant to section 140(4) of the LGA seeking his approval for a change in the endowment purposes for which the Takapuneke Reserve land may be used from an "endowment in aid of Council funds" to an "endowment to facilitate and support firstly, the use of the land at Takapuneke/Greens Point as an historic and/or national reserve and, secondly, the vesting of that land as an historic and/or national reserve under the Reserves Act 1977."

BOARD RECOMMENDATION

That the staff recommendation be adopted.

BACKGROUND

32. There is considerable significant local and national historical value associated with this site. The following articles or papers are attached detailing the historical background:
- (a) Article from "Heritage New Zealand" 2005, which provides a synopsis of relevant historical events.
 - (b) Pages 155-9 of 'Banks Peninsula: Cradle of Canterbury' by Gordon Ogilvie.
 - (c) Article entitled "The Future of the Land at Green Point" by Harry Evison.
 - (d) Article written by the former editor of the NZ Historic Places Trust John Wilson.
33. In addition to the historical and archaeological implications of this site there are issues of cultural sensitivity to be considered. The Historic Places Trust in 2002 registered this site under the Historic Places Act 1993 as a 'Wahi Tapu'. 'Wahi Tapu' is defined in the Historic Places Act as *"a place sacred to Maori in the traditional, religious, ritual or mythological sense."*

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34. The original block of endowment land, including Greens Point and Takapuneke Reserve, was purchased by the Akaroa County Council in 1978 from T A Robinson for the sum of \$118,000.00. The purchase was funded from the proceeds of sale of rural endowment land held by the Akaroa County Council at Ashburton.
35. As was then required by section 230(4) of the Local Government Act 1974 the Akaroa County Council applied for and obtained the consent of the Minister of Internal Affairs to sell the endowment land at Ashburton and acquire the land at Greens Point/Takapuneke in lieu of the Ashburton property. That consent was expressly given by the Minister on the basis that the Greens Point/Takapuneke land "is to be designated as an endowment in aid of county funds". Effectively all the Minister consented to was the sale of the Ashburton land and its replacement with the Green Point land. The Greens Point/Takapuneke land was explicitly to remain as endowment land.
36. Following the original purchase in 1978 part of the original site was utilised as the local Akaroa refuse dump. The dump was established in 1979 and closed in 1994. It has been subject to continual monitoring and management since that time. It appears that additional ground cover may be required in the next few years and the site could well be suitable for road clearance 'slip' spoil and excess road materials.
37. The original block of endowment land was comprised within one certificate of title. However, in 1997 the Banks Peninsula District Council undertook a subdivision of the original block and created four new legal allotments or titles and dealt with them as follows:
 - (a) 4.0611 hectares being Lot 1 Deposited Plan 73274 - this land is still held by the Council in fee simple and is now zoned 'residential' under the Banks Peninsula District Plan.
 - (b) 2864m² being Lot 2 Deposited Plan 73274 - this site was sold in 1997 to a private interest.
 - (c) 1741 m² being Lot 3 Deposited Plan 73274 – this site is still held by the Council in fee simple and is now zoned for reserve purposes under the Banks Peninsula District Plan. This land has been valued by the Council's valuer, Ford Baker, at \$510,000.
 - (d) 9.6087 hectares being Lot 1 Deposited Plan 76825 – this site is now held by the Council as "local purpose (historic site) reserve" subject to the Reserves Act 1977. This land has been valued by the Council's valuer, Ford Baker, at \$740,000.
38. That part of the Greens Point land containing 4.0611 hectares and being described as Lot 1 Deposited Plan 73274 is zoned under the Banks Peninsula District Plan as 'residential' and has the potential to be subdivided in such a way as to yield approximately 47 residential sections. This land has been valued by the Council's valuer, Ford Baker, at \$5,400,000.
39. On 8 February 2006 the Banks Peninsula District Council ("BPDC") passed the following resolution:

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 - (i) in terms of the Reserves Act 1977, to initiate the making of Greens Point into an Historic Reserve and change the classification of Takapuneke Reserve from Local Purpose (Historic Site) Reserve into an Historic Reserve (as is the adjacent Britomark Historic Reserve)*
 - (ii) to obtain written evidence of the historical background of all three Historic Reserve areas to enable an Order-in-Council to be approved to make Greens Point, Takapuneke Reserve and the Britomark Historic Reserve into a National Reserve.*
 - (iii) that a Management Plan be prepared for the three Historic Reserves."*
40. A Council seminar on this subject matter was held on 3 July 2007. That seminar concluded with the Chairman requesting that "staff be asked to bring forward a full report to provide clarity to the situation and fulfil the resolution of the previous Council."